

WILMER CUTLER PICKERING
HALE AND DORR LLP

November 15, 2005

Anne Harden Tindall

VIA ELECTRONIC DELIVERY

Ms. Marlene H. Dortch

Secretary

Federal Communications Commission

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Re: *Ex Parte* Notice in ET Docket No. 05-247

Dear Ms. Dortch:

On November 14, 2005, Kathleen Ham and Bob Calaff of T-Mobile USA, together with the undersigned, counsel to T-Mobile USA, met with Bruce Franca, Julius Knapp, Lauren Van Wazer, Bruce Romano, Alan Scrim, Gary Thayer, Geraldine Matisse and Priya Shrinivasan of OET. Consistent with T-Mobile's filings in this docket, we discussed T-Mobile's support for Continental's Petition for Declaratory Ruling to prohibit Massport from preventing the installation of WiFi antennas in the airline clubs at Boston's Logan Airport. Further, T-Mobile discussed the fact that, in order to invoke the safety exception to the Commission's OTARD rules, it is not sufficient for Massport merely to state that public safety entities wish to make use of the central antenna, but it is necessary to show that use of antennas on leased premises creates an actual threat to physical safety at the airport.

Pursuant to Sections 1.49(f) and 1.1206(b) of the Commission's rules, a copy of this letter its attachments has been filed electronically.

Respectfully Submitted,



Anne Harden Tindall
Counsel to T-Mobile

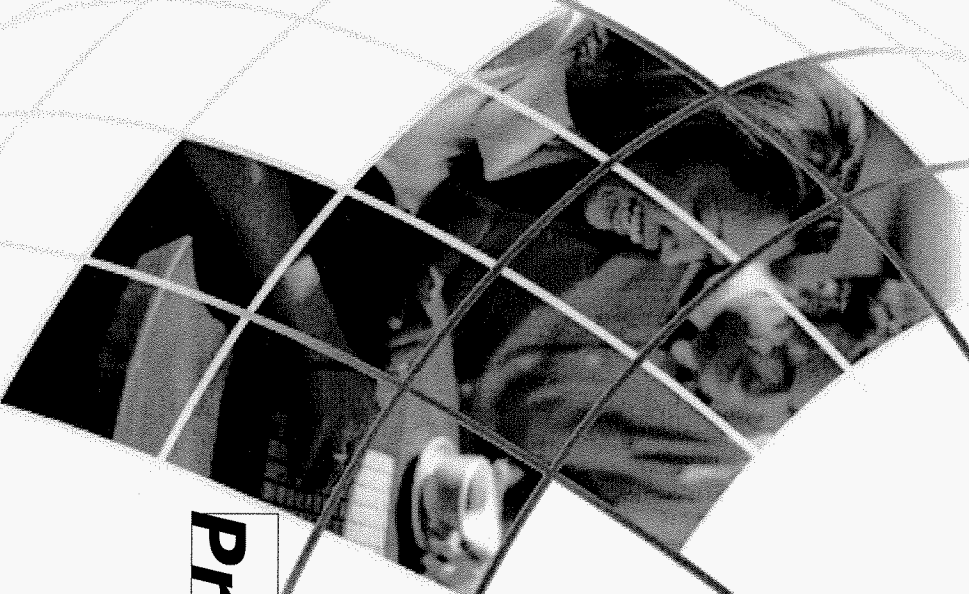
Cc: Bruce Franca
Julius Knapp
Lauren Van Wazer
Bruce Romano
Alan Scrim
Gary Thayer
Geraldine Matisse
Priya Shrinivasan

..T..Mobile..

November 14, 2005

Presentation to OET

Get more from life®





T-Mobile's advanced Wi-Fi network

6,400 US HotSpots

- Airline clubs of Delta, United, American, and USAir
- Starbucks
- FedEx Kinko's
- Borders Books & Music
- Select Hyatt Hotels

Fast, Convenient, and More Secure

- T1 connections
- WPA with 802.1x security technology
- T-Mobile Connection Manager



Experience at Logan Airport

- **HotSpot service available at American Admirals Clubs from 1999 – April 2005**
- **HotSpot service scheduled to commence in Delta Crown Clubs in Spring 2005**
- **Spring 2005, Massport forced shut-down of American HotSpots and prevented installation of Delta HotSpots**



Commission has authority over dispute

- **The Communications Act of 1934 grants the FCC regulatory authority over all issues related to radio frequency emissions**
- **Sections 2, 301, 302, and 303(c)-(f) of the Act demonstrate Congress's express intent to provide the Commission with exclusive jurisdiction**
- **The Commission has twice concluded it has jurisdiction in this context**



Massport's actions are contrary to federal law and policy

- **OTARD rules forbid interference with use of fixed wireless antennas in tenant-controlled space**
- **Federal policy favors rapid deployment of advanced wireless technology**
- **Federal policy favors competition and customer choice among providers**



OTARD rules forbid Massport's lease restriction

• “[a]ny restriction, including ... any ... lease provision ... or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of an antenna that is ... [u]sed ... to receive or transmit fixed wireless signals other than via satellite, and that is one meter or less in diameter or diagonal measurement ... is prohibited to the extent it so impairs[.]” 47 C.F.R. §§ 1.4000(a)(1)(ii)(A), (B)



OTARD rules apply to Continental's antenna

- **Continental installed the antenna in its frequent flyer lounge—an area within its use or control, as defined by its lease**
- **Continental used the antenna to transmit fixed wireless signals, other than by satellite**
- **Continental's antenna was less than one meter in diameter**



Lease provision "impairs" Continental's use

- **Required prior approval from Massport unreasonably delays or prevents installation and use of Continental's fixed wireless antenna**
- **Use of the Logan Airport central antenna unreasonably increases the costs associated with Wi-Fi access**



The Central Antenna exception does not apply

- End-users of the central antenna *cannot* receive the service of their choice
- AWG's service is *not* as good or better than that available over tenant antennas—it provides a weaker signal and less security
- AWG's service will cost more than Continental's or T-Mobile's
- Application of the central antenna exception in this context could delay service in other airports



The Public Safety exception does not apply

- **Massport's lease states no "clearly defined, legitimate safety objective"**
- **Any safety objective would be speculative: no public safety entity uses the central antenna**
- **Massport's assertion of interference with public safety use of the central antenna is unsupported (no public safety entities have supported Massport) and unjustified (unlicensed use is not subject to interference protection)**



Airports are not "special use" facilities

- **FCC staff has already concluded that the OTARD rules apply in airports**
- **Continental's lease establishes traditional leasehold rights**
- **Previously recognized "special use" facilities, e.g. dormitories, are distinguishable**



Deployment of advanced wireless Technology is threatened

- **The FCC is charged with facilitating expansion of advanced wireless technology**
- **The FCC has been successful to date: wireless use is increasing dramatically**
- **But Massport has frozen advancement at Logan and could set a precedent for other multi-tenant environments**



Logan is a competition-free zone

- Travelers, merchants, and airlines at Logan Airport have *no choice* in wireless provider
- AWG is subject to *no competition* from other wireless providers
- Massport has created a monopoly, a *de facto* exclusive license in a non-exclusive, shared band



FCC can and should end Massport's monopolistic actions

- **Management of unlicensed spectrum in multi-tenant environments is clearly within the FCC's jurisdiction**
- **Massport's violation of the OTARD rules is patent**
- **Left unchecked, Massport's monopolistic behavior will encourage the same among landlords nationwide**